Fall 2010

APEX

BULLETIN OF THE STANISLAUS DENTAL SOCIETY

MARK YOUR CALENDARS!

NOVEMBER

24 **Wednesday**
CDA/ADA offices closed for Thanksgiving Holiday. SDS office closes at 1:00 pm.

25-26 **Thursday - Friday**
Thanksgiving Holiday — CDA/ADA/SDS offices closed

DECEMBER

16 **Thursday**
Installation & Spouse Night, Del Rio Country Club, 6-9 pm

23 **Thursday**
Winter Holiday — min. day CDA/ADA/SDS offices closed

24-31 **Friday - Friday**
Winter Holiday — CDA/ADA/SDS offices closed

JANUARY

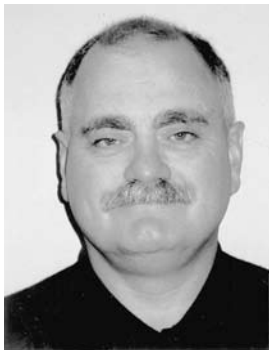
7 **Friday**
SDS CPR Course, Memorial Education Center in McHenry Village

13 **Thursday**
SDS Board Meeting

17 **Monday**
Martin Luther King Day — SDS office closed

14 **Friday**
CE — OSHA/Dental Practice/ Infection Control, Jacob's Fine Dining, 8:00 am -3:30 pm

20 **Thursday**
General Membership Meeting, Jacob's Fine Dining, 6-8 pm



President's Message

Dr. Michael E. Cadra, 2010 SDS President

Dr. Jodi Sceville "reminded" me last night that I should get my next President's letter to her ASAP. I went to bed trying to come up with a relevant topic to write about. Luckily, I woke up this morning to find a new FDA drug warning regarding bisphosphonates on CNN. If you remember, in my last note I reported on atypical femur fractures associated with bisphosphonate therapy.

When I arrived at the office this morning my October 6, 2010 copy of JAMA was waiting for me. Upon opening, the first thing I noted was a "Grand Rounds" article on "Atypical Fractures as a Potential Complication of Long-Term Bisphosphonate Therapy".

The FDA warning did not go as far as to put a "black box" warning on the drug. The drug information to consumers must now warn of the potential for fractures after prolonged use. Physicians are now urged to periodically evaluate whether patients who have been on this therapy for more than five years should continue taking these drugs.

The concern at this time, according to the JAMA article is that "prolonged (>5 years) bisphosphonate therapy may suppress bone remodeling to the extent that normal bone repair is impaired". Sounds a lot like the osteonecrosis of the jaws that we see.

Unfortunately, I continue to see patients that have been on long term therapy without re-evaluation to see if continuation of the drug is appropriate and those that have been placed on the drug as a "preventive" measure without diagnosis with the DEXA scan.

Within the JAMA article, I found other points of interest, some of which confirmed my current knowledge, some adding to my knowledge. We know that assessing the rate of bone turnover is challenging. This fact is acknowledged in the article and the physicians are using the same marker that dentists are using, however controversial; the C-terminal telopeptide (CTX). The other marker, which is probably going to be promptly rejected by our dental patients, is tetracycline double-labeled bone biopsy. The patient is given two short courses of tetracycline separated by a 10-day window, and then undergoes an iliac crest bone biopsy. This yields data that gives an idea of the rate of bone turnover.

Treatment for over-suppression of bone turnover is with Teriparatide (recombinant parathyroid hormone). This drug is self-administered in a subcutaneous injection for up to two years within a lifetime. I have not seen this used on any of our BRONJ patients and doubt that it would be appropriate therapy after the occurrence. I would like to see if it has an indication in our patients with CTX<100. The paper admits that outcome data for use of Teriparatide in patients with atypical fractures is not yet available.

2010 SDS Committee Chairs

Bylaws
Lee W. Mettler, DDS

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APEX
Jodi Sceville, DDS
Media Relations
Bruce Valentine, DDS
Website
Brad Pezoldt, DDS

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Nicholas Poblete, DDS

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Lawrence J. Bartlett, DDS

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Garry L. Found, DDS

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Clarke V. Filippi, DDS

Peer Review
John C. Swearingen, DDS

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Clarke V. Filippi, DDS

Well Being
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Toll Free Numbers

ADA . . . . . (800) 621-8099
CDA . . . . . (800) 232-7645
TDIC . . . . . (800) 733-0634
1201 Financial . . . . (800) 726-5022
Denti-Cal Referral (800) 322-6384

President's Message, continued from Page 1

You can find the full article in JAMA October 6, 2010, Vol.304, No. 13, p1480-84 and the FDA warning can be found at www.fda.gov/Safety/MedWatch/SafetyInformation/Safety-AlertsforHumanMedicalProducts/ucm229244.htm.

On another note, I just returned from the AAOMS annual meeting. I picked up a book for the flights to and from Chicago, The Healing of America, by T.R. Reid. Mr. Reid compares the various payment systems for health care around the world, how they came to be and the quality of care under the various systems. I found it to be a very interesting discussion in light of the recent attempts to reform "health care" in the United States.

It appears that in all the countries that he studied, there was no attention to dental care or how oral health care affects total health. In spite of the recent publicity (at least in our literature) about all the attempts to remove "barriers to oral health care," it appears that the legislators and our physician colleagues know very little about the systemic implications of poor oral heath care and how pharmacological treatment of systemic diseases can affect oral health. If you were interested in a slightly biased evaluation of the various systems, I would highly recommend this book. The final chapter is a summary of the recently passed "Obama Care."

Another great read is, "The Checklist Manifesto" by Atul Gawande. Recent articles in the JADA (Vol. 141 p. 1010-17) discuss adaptation of airline crew resource management and checklist concepts to dentistry. This has been going on in the medical world since the start of this decade. In fact the medical model is now looking at Formula One pit crews as a safety model.

This book points the way to adapt checklists to the practice of medicine (and is easily adapted to dentistry). By using checklists, delivery of services to out patients can become more consistently delivered, with greater safety and less stress for the doctor and the team.

This will be my last letter as President. It has been a very rewarding year and I wish all board members well in continuing to serve the membership. I encourage all of you to become involved in the work of the society, especially the younger general practitioners. As you will note, we have added another specialist to the board, Dr. Matt Swatman. The society is in good hands but in order to serve the needs of the largest segment of the membership, we will need more involvement from that demographic.

CDA Dues

Yep, it's that time of year again! CDA will be sending out your notices for dues renewal by the end of November. It's important that you remember the EDP (electronic dues payment) option that offers payment over a 12 month period and the administration fee is only $1/month. Many of our members are utilizing this valuable option and finding it fits their budget quite nicely by spreading the payments over the course of a year instead of one lump sum.

EDP enrollment is offered online at www.cda.org/renew and currently enrolled members just need to verify that their information is current and make payment by credit card. Remember that payments made online at cda.org are secure and password protected. All dues renewals can also be made directly to CDA at **800.CDA.SMILE** (232.7645).

Come back, we need you as much as you need us!

Dental Benefit Plans

THE RIGHT WAY TO OFFER A PATIENT DISCOUNT

By: Greg Alterton

Can a dental practice offer a discount to patients? Can a dentist who is not a member of a patient's dental plan network offer discounts to that patient?

We hear such questions every so often. Usually, it goes like this: "We'd like to offer a discount on services as a promotion to new patients of the practice. Can we discount the patient's portion by writing off the patient's deductible and/or co-payment?"

The answer is yes, and no. It depends on how a dental practice applies the discount.

Dentists need to remember that for plans they're contracted with, that plan may require them to bill patients for, and make an effort to collect, deductibles and co-payments. Because of the contracts dentists have with dental plans to be part of their networks, dentists have surrendered their absolute right to charge what they will for various dental procedures. Of course, a dentist is typically limited by the allowable fee in a provider contract regarding what can be charged for a procedure. Plan contracts also typically stipulate that whatever the plan pays for certain procedures may be "payment in full" for those procedures, and a dentist cannot bill the patient for the balance. Where plans allow balance billing of patients for, typically, more high-cost procedures, dentists are sill limited to a balance based upon the plan's recognized allowance, not the dentist's usual, customary and reasonable fee. Dental plan provider contracts usually require participating dentists to collect all deductibles and/or co-payments from patients.

Plans calculate their per-enrollee premiums based on the cost-share assigned to the patient. If all or a portion of the patient's cost-share is not collected, even though the dentist is the one absorbing the discount, a plan's cost-of-coverage calculations are thrown off. One dental plan official told CDA that an effect of forgiving or failing to collect a patient's co-payment responsibility is that dental care may actually become overutilized. It's a basic economic principle that the lower the cost of a service or product, the greater the demand for that service or product. Clearly, a patient isn't going to have a tooth filled where no caries are present, but those who crunch the numbers at the plans maintain that throwing off the cost-share balance between what a patient pays and what a plan pays for treatment makes the plan's calculation for premium level too low to cover a measurable increase in the demand for care.

So, for those patients who are covered by plans with which the dentist is in network, forgiving or failing to collect the patient's co-pay is likely a violation of the contract the dentist has with the plan.

But what about a discount for a patient covered by a plan with which the dentist isn't a contracted provider? There's more latitude here, but again it depends on how the discount is extended.

Let's assume, for example, that a patient is coming in for a procedure for which the dentist has a UCR fee of $200. The patient's plan may cover 50 percent of the fee, with the ability of the dentist to recover, or

The Right Way to Offer a Patient Discount continued…

balance bill, the patient for the other 50 percent. So, normally, the plan would pay $100 of that $200 claim, and the patient would be responsible for paying the remaining $100 balance. But what if the dentist, in a desire to grant a discount to the patient, cuts the patient's co-payment responsibility in half? The claim was for a procedure with a fee of $200. The plan paid $100, based on the claimed amount; and the dentist only billed the patient $50 of the remaining balance. Is there anything wrong with this?

Most likely. What's wrong with this scenario is that the cost of the procedure really wasn't $200 but $150. The plan, should it determine later that the dentist filed a claim for $200 on a procedure that only in actuality carried a charge of $150, might determine that the dentist fraudulently overcharged the plan — claiming a $200 fee, which was actually only $150.

What to do? If a dental office receives a new patient and wants to extend a discount for the initial exam, X-ray or whatever, include the discounted amount in the claim submitted to the plan. Instead of filing a claim for $200, if the intent is to offer a discount to the patient, send the full sum of the procedure on the claim to the patient's plan: $150, of which the plan might pay $75, and the patient might then pay the balance of $75. The patient gets a discount of $25, for which he or she will mostly likely be grateful; and obviously the plan has gotten the benefit of the discount as well. And the dentist has avoided billing a plan an amount more than they intend to actually charge for that particular appointment.

So, discounts to patients are allowed, but check your contract (if you're in contract with the patient's dental plan) in terms of whether a patient co-payment is required. And if you are not in the patient's plan's network, reflect your intended discount in the actual claim to the plan.

For further information on this or other dental benefit payment issues, contact the CDA Practice Support Center at 866.232.6362.

This article was first published in the November 2009 CDA Update.

SDS welcomes Dr. Emil Villaroman!

Dr. Emil Villaroman started a practice in Tracy in January 1999. He heard about Dr. Randy Hayashi's practice in Modesto sometime last year and finally "moved in" January 2010. He shares time between the two offices, but his wife Melissa, who is also a dentist and two other associates help manage the time between the two practices. Dr. Villaroman practices solo at the Modesto practice.

Dr. Villaroman's practice provides most fields of general dentistry for all age groups and is also certified in Invisalign and Clear Correct.

Dr. Villaroman states, "Dr. Randy Hayashi did a great job with Aesthetic Dental Designs both in patient care and the overall look and feel of the physical office, which many say resembles a spa." He hopes to continue to provide the same quality of care and experience to both existing and new patients.

Dr. Villaroman and his family enjoy traveling together whenever possible. They have a large extended family of relatives, office staff and friends and play volleyball and ping-pong regularly. They also participate yearly in a dental mission trip to the Philippines.

Dishing the Dirt on Facebook

by Toni Talbot, SPHR

Question: My daughter told me that she was on Facebook and found out one of my employees had made some disparaging comments about my practice, her co-workers, and some of my patients. She must have forgotten that she had "friended" my daughter. These negative comments must have had to be seen by a lot of people, including my patients.

What, if anything, can I do? I feel a bit violated. It is one thing to complain to your friends or family, even to your co-workers, but she's posted her complaints for all the world to see. What can I do? I can't stop her from using Facebook, but do I have the right to stop her from making these comments against my practice, my staff and especially my patients?

Answer: An attorney once told me that a person may have the right to free speech, but you also have the right to protect your reputation. What can you do about this employee? You certainly have some options. For starters, as an at-will employer, you have the ability to address her actions through discipline, including termination. But you may first want to consider your other options.

Do you have a policy in place that serves notice to your staff that these actions are not acceptable, and that if employees do such things, there will be consequences? While it should be "common sense" that her comments would not be acceptable – you cannot count on the fact that the employee has any concept of the impact of her actions.

Employees need to know, especially in a service position, that they are the face of the practice, and although they are not at work all the time, they represent the practice to the community at all times. While they may see Facebook as something that's private, it really is very public. This particular employee's comments may have caused harm to your practice, and consequently you maintain the right to address this potential harm. The best way to address this problem is to expand your technology policy (if you have one) to include language that address social networking. This is done through a policy that specifically addresses content in an employee's social networking sites. This policy should address:

• restriction of the content of individual social networking sites -- no comments about the practice, co-workers, patients, and vendors;

• restriction of use during the work day -- limited to business-related activities;

• no identification of the practice, such as the logo;

• defining the practice's use of the networks for marketing and communication;

• addressing excessive time spent on non-productive activities –- including time spend on Facebook and other social media during work time;

• notification of management when employees have knowledge of any aspect of a violation of this policy;

• addressing consequences for failure to comply.

You will certainly get complaints from your staff: "How can you restrict what I say on my Facebook page?" "You're invading my privacy!" Just remember, you're not restricting what they say unless they are writing comments about you, your practice, your staff or your patients.

Yes, you can fire her, you can formally discipline her, or you may want to consider a documented coaching session where she is advised of the impact of her actions on the practice. Tell her that this will not be tolerated in the future. If she has been a good employee, this may be an opportunity to learn why she is unhappy, what problems she is having, and how these problems can be addressed.

At the end of the day, you should look at the whole picture and then make the decision on how to handle her. No matter what you do with this employee, you will need to make sure that you implement a policy that addresses social networking and that you have a means to administer the policy.

Reprinted, with permission, from the Journal of the Michigan Dental Association, June 2010 issue.

Robin's Relevant Remarks

Robin Brown
SDS Executive Director

As SDS members get closer to the end of another year you can look back and say, "I've weathered the storm, yet again!" This year has presented many obstacles for our members who have faced the challenges of the recent economy yet continue to keep their practices going. Despite some reduced patient loads and possibly reduced hours, you remain in practice and steadfast in your membership in your dental society. (Remember that the CDA Compass (cdacompass.org) offers many suggestions on how you can continue to get through this rocky period.) Any organization is only as good and successful as its members and our strength depends on your involvement. Whether attending our many events, being part of a committee (please!) or volunteering for community projects, your involvement puts a positive face on the practice of dentistry.

What benefits have been provided by your dental society in supporting you and your practice? SDS has provided you and your staff the opportunity to obtain 28 units of CE credit between CPR courses, General Membership meetings and four full CE courses. We've had General Membership meetings offering a CE unit, really good food, raffle prizes and above all, the chance for gathering amongst friends at a warm, inviting location; a rare opportunity indeed with your busy work and family schedules.

Field Day continues on with great sponsor involvement and a day and evening enjoyed amongst peers, family and friends. Staff Appreciation, held at the Del Rio Country Club, was attended by 150 members and staff and a great time was had by all. Installation, which will also be held at the Del Rio Country Club, is always a beautiful event where we welcome in board members new to their position and say thank you so much to the President who leaves his helm in very capable hands.

The office has gone electronic and now offers important notices, event information and reminders saving members the hassle of dealing with too much paper and, 'Now where did I put that flier again?' (We appreciate you sharing this information with your staff so we can continue to get enough turn-out to our CE courses and events to be able to continue to offer them.) With the addition of electronic mail we have been able to reduce mailing costs and despite the rise in office costs and event fees, we will be able to keep our dues rate steady.

As executive director of SDS (and the one who answers the office phone!), I receive phone calls from members and staff looking for direction and information on how to best solve their practice issues so they can be the most effective . I hope I have served you well. My number one priority is helping you resolve your issues so you can continue to do one of the things you do best...

... SDS members: preserving the dental health of the earth's population, one patient at a time!

Enjoy the Holidays!

SDS Membership Status Update

256 Total members

209 Active Members

4 Permanent Disability

9 Lifetime Active

34 Lifetime Retired

5 Retired

4 Affiliates

7 New!

SDS Welcomes Its Newest Members!

General Practice

Kaci Sims DDS – Recent grad - Turlock

Hermon Bhullar DDS – Valley Hill Dental - Modesto

Pawanjeet Pannu DDS – Recent grad – Ceres

Hiteshkumar Modi DDS – Modesto

Damandeep Tur DDS – Recent grad – Modesto

Lora Ota DDS – Transfer from Tri-County DS - Salida

Oral/Maxillofacial

Ajay Patel DDS – Turlock - Affiliate with Yosemite DS

Staff Appreciation

Left photo: Dr. Andy Soderstrom and staff enjoying the evening.

Right photo: Dr. Michael Shaw's staff laughing it up.

Well, SDS outdid itself at this year's Staff Appreciation! The event was held at the Del Rio Country Club and was attended by 150 members and their staff. Everyone arrived beautifully dressed, as a harpist welcomed the guests by playing South American music (definitely not your typical harp music!). The food was truly scrumptious and the comedian, Joe Klocek from Punch Line and Comedy Central, was very funny and picked on poor Drs. Cadra and Pezoldt, who handled the ribbing with style and grace. The raffle prizes, which included some beautiful pearl jewelry, were a hit. Thank you to all SDS members who were so generous in inviting and appreciating their staff members to a wonderful evening!

In Memory

PAUL A. TRILLER, DDS

July 11, 1921 ~ September 14, 2010

Former SDS member, Dr. Paul Triller passed away on September 14. Dr. Triller had a practice here in Modesto for 27 years. He was a veteran of World War II and the Korean War and loved his gardens and golfing with friends. Remembrances can be made to the Gallo Center for the Arts or to a favorite charity.

Editor's Letter

by Jodi Sceville, DDS – SDS APEX Editor

There is a story about a very strong woodcutter who applied for a job as a timber merchant, and he got it. The pay was really good and so were the working conditions. For that reason, the woodcutter was determined to do his best. The first day the woodcutter brought in 18 trees. "Congratulations," the boss said. Very motivated, the woodcutter tried harder the next day but he could only bring 15 trees. The third day he worked even harder, but he could only bring in 10 trees. Every day was less and less. "I must be loosing my strength", the woodcutter thought. He went to the boss and apologized, saying that he could not understand what was going on. "When was the last time you sharpened your axe?" the boss asked. "Sharpen? I had no time to sharpen my axe. I have been too busy trying to cut trees." (1)

In the last quarter of the year, I feel stretched like silly putty between obligations to my patients, practice, family and other activities. Yet it is that same ebb and flow that is necessary for a balanced life. Here are some thoughts on that balance:

Plan to attend a local or destination seminar. I have heard great reviews about CDA Presents this September in San Francisco. Many dentists enjoyed the Thursday through Saturday format which allowed no more travel time on Sunday. For some it required an extra day away from the office but the rewards were worth it. I enjoy seeing my dental team excited after hearing dynamic speakers and socializing with peers. Many of us enjoy seeing classmates from dental school days.

You don't have to travel far to enjoy a good CE class. Make sure to look for our SDS emails for upcoming lectures. Don't just send your auxiliaries, attend with them!

Make sure to build in time for yourself weekly for things like hobbies or exercise. Review your short term and long term goals personally and professionally. What are simple things you can do today to get one step closer?

And my personal favorite: getting out of the office for lunch. I have spent too many lunch hours finishing chart notes, answering emails, and more or less spinning my wheels. Walk out the door and breathe some fresh air and get a bite to eat with your favorite someone. You'll come back refreshed and more efficient!

Have you stopped to sharpen your axe lately?

Cheers,
Jodi Sceville, DDS

(1) 7 Habits of Highly Effective People: Steven Covey.

SDS *Field Day 2010*

On Friday, June 11 nearly 50 of our SDS members and guests participated in the 2010 Field Day at Stevenson Ranch Golf Club. Festivities included a round of golf and trap shooting for those who enjoy the wide open spaces and challenge of the hunt (whether it is a golf ball or a clay disk). Later, everyone gathered at the clubhouse for lots of fellowship, a bbq chuck-house style dinner, awards and an opportunity raffle drawing. Thank you to those that attended and sponsored this event.

We hope you will join us next year!

Practice Management

ACCESS TO PATIENT RECORDS

Can patients receive copies of their records?

Yes. Patients and their representatives have the right to access their records. Patients are not limited in the number of requests for access to, or copies of, records. Copies of x-rays need not be provided to the patient if the original x-rays are transmitted to another dentist at the request of the patient.

Can the patient be charged for the copies?

Yes. Copying charges may not exceed specified limits. A reasonable charge for clerical costs involved in making the record or copies available is allowed. Many dentists forgo charging a fee if they transmit the records directly to another dentist.

Must the patient clear up any outstanding account before receiving copies of their records?

No. Dentists may not demand an outstanding account be cleared before providing access to records. However, there are other mechanisms by which the account balance may be pursued.

What exactly is the patient entitled to receive?

The law regulating patient right to access to medical records is found in the California Health and Safety Code Section 123100-123149.5. It gives patients the right to:

- Inspect records during business hours within five days of presenting a written request.
- Receive copies of records within 15 days of presenting a written request.

The law gives the dentist the right to:

- Charge a reasonable clerical cost for locating and making the records available.
- Charge $.25 per page (or $.50 per page for microfilm copy), as well as reasonable clerical costs, for copies.
- Charge reasonable costs, not exceeding actual duplication cost, for x-ray copies.
- Prepare a summary of the records as an alternative to providing copies or allowing inspection.

If the summary option is exercised, the summary must be provided within ten working days of the patient's request, 30 days for extraordinarily long records or if the patient has been discharged from a licensed health facility within the last ten days. It must include the chief complaint(s) with pertinent history; findings from consultations and referrals to other health care providers; diagnosis, where determined; treatment plan and regimen, including medications prescribed; progress of treatment; prognosis, including significant continuing problems or conditions; pertinent records of diagnostic procedures and tests and all discharge summaries; objective findings from the most recent physical exam,

Access to Patient Records continued…

such as blood pressure, weight and actual values from routine laboratory tests; and a list of all currently prescribed medications, including dosages , and sensitivities or allergies to medications recorded by the dentist.

If a summary is provided, the dentist may confer with the patient to determine why the patient wants the records. If the information required relates only to specific injuries, illnesses or episodes, the summary need only relate to those items.

Must I provide a patient with an electronic copy of his or her record?

If the dental practice maintains a patient's record in electronic form, the patient has the right to receive an electronic copy of his or her record and also to direct the dental practice to transmit an electronic copy to an individual or entity designated by the patient.

Who else is entitled to have access to patient records, and under what circumstances?

Employer: Employers, in general, do not have the right to access the information ***except*** in workers' compensation cases or when necessary to carry out their responsibilities for workplace medical surveillance under Cal-OSHA or similar federal or state laws. Employers who self-insure may have limited access to patient information necessary to determine payment. Employer-sponsored dental benefit plans also have limited access to patient information necessary to determine payment and to conduct quality assessment audits.

Payer: If an individual other than the patient is responsible for paying the patient's bill, disclosure of patient information is allowed under HIPAA as long as the disclosures are limited to the minimum amount of information necessary to obtain payment. In making such disclosures, health care providers also must honor any reasonable request for confidential communication and any agreed-to-restrictions on the use or disclosure of the patients' protected health information. The dental office's Notice Of Privacy Practices can state that if a patient designates another person as responsible for payment, the office will disclose the minimum amount of personal health information necessary to obtain payment from that person. If the patient objects to that disclosure, the office should inform the patient that he or she will have to choose between allowing the office to disclose information in order to obtain payment or paying for the services himself or herself. If a patient has paid the full cost of an item or service out-of-pocket and requests that the personal health information regarding the item or service not be disclosed to a health plan for purposes of payment or health care operations, the dental office must honor the patient's request.

Associate: A dentist who was an associate in a dental practice may not obtain copies of patient records without first obtaining written permission from the patients.

Mandated Reporting: Dentists also have some discretion under HIPAA and state law to disclose possible domestic abuse, criminal activity, and other legal violations involving patients to appropriate agencies.

Subpoenas: If a dental office receives a subpoena for a patient's record, circumstances will dictate the way to respond.

> If law enforcement serves the subpoena, consult your attorney immediately. Provide the officers with access to the record while informing them that you are contacting your attorney. Do not try to impede law enforcement's access to records.

Access to Patient Records continued…

In many cases, receipt of a subpoena likely arises out of a civil lawsuit. Upon receipt of a subpoena in these cases, evaluate whether you can comply with the demand for records. Consider these questions:

- ***Do you have the requested records?*** If not, provide a statement that you do not have the records.
- ***Is the subpoena issued part of a civil action in California?*** Out-of-state subpoenas are not enforceable in California, except for subpoenas issued in federal cases. Subpoenas issued as part of state administrative hearings have patient notification requirements. Consult with your attorney for more information.
- ***Are you a party to the lawsuit?*** If yes, contact your professional liability carrier.
- ***Is the subpoena valid?*** A subpoena is valid if

  (1) it is personally served on you or someone authorized by you to receive a subpoena;

  (2) it is issued by the clerk of the court or attorney handling the lawsuit;

  (3) it is addressed to you or someone qualified to certify the requested records;

  (4) it contains a date specified for production of records that is at least 20 days after the subpoena was issued and at least 15 days after it was served on you and at least 20 days after notice of the subpoena was received;

  (5) it specifies each item or category of items to be produced; and

  (6) it must have documentation demonstrating that the patient either has consented to the release of records or has been informed of the records request.

The 20 days is specified because time is allowed for the court to hear motions to suppress the subpoena. If the subpoena is valid and you are not a party to the lawsuit, produce the records as requested, sign the affidavit and submit statement for costs incurred in responding to the subpoena.

For more information on managing patient records, refer to "Patient Records – Requirements and Best Practices" on cdacompass.com.

This resouce is provided by the CDA Practice Support Center. Visit the website at cdacompass.com or call 866.232.6362

Prescription Liability

by Carla Christensen - Risk Management Analyst, TDIC

Many dentists treat their dental teams like an extension of their families; so when an office manager has a sinus infection or a hygienist has trouble sleeping, the dentist may feel compelled to help them. Unfortunately, attempts to assist staff, relatives or friends with non-dental ailments may result in discipline with the dental licensing board and may even cost the dentist his or her dental license, as well as, place the person taking the medication at risk. Practicing medicine without a license is a presumption of negligent care.

For example, a dental assistant's husband strains his back while repairing his car. The assistant asks the dentist to prescribe her husband a few prescription painkiller tablets until he can see his physician. This is a valued employee so the dentist decides to write the prescription. Two days later, her husband is involved in a work-related accident. Drug testing by his employer reveals the presence of the painkiller, which is in violation of the company's vehicle operation policy. He admits he failed to contact his doctor after he obtained the medication from his wife's employer. The dentist is charged with practicing medicine without a license and the dental board and Drug Enforcement Agency (DEA) initiate investigations. State licensing boards give particular scrutiny to prescribing narcotic pain medications such as VICODIN® because of the potential for misuse.

Even if the treatment involves a condition of dental origin, a dentist is at risk if he or she writes a prescription without first performing a dental exam, obtaining a health history, and documenting indications for prescribing the medication. Asking if the employee, relative or friend has any known allergies prior to prescribing is not sufficient. The individual may be taking another medication that could result in a serious drug interaction. Be aware of staff that has access to your DEA number. It is illegal for an employee to use your DEA number to call in a prescription or to order additional medication through an established vendor without your authorization. Access to your DEA number does not entitle a member of your staff to prescribe or obtain prescription medications without your knowledge and approval.

To avoid potential exposure for prescription liability, follow these guidelines:

- Do not write a prescription for anyone who is not a patient of record.
- Do not provide medication or prescriptions for non-dental issues.
- Examine the patient, obtain a health history and document the diagnosis related to treatment recommendations and prescriptions.
- Keep all narcotics in a locked location; you should maintain possession of the only key.
- Perform frequent, random stock checks and audits.
- Secure prescription pads and closely monitor quantity.
- When possible do not delegate pharmacy prescription calls to staff.

Prescribing medication for an employee, friend or family member who is not a patient of record places a dentist's reputation and license at risk. The best of intentions may result in the worst outcome for you. The best practice is to treat family members and friends the same as all other patients, without exception. Avoid liability exposure by refusing to write prescriptions for non-patients and for non-dental reasons. If you have any questions regarding the information presented in this article or you need to discuss another risk management issue affecting your practice, please call the **TDIC Risk Management Advice Line** at **800.733.0634**.

RM Matters

My Patient Filed Bankruptcy. Now What?

By Yasica Corum
Risk Management Analyst, TDIC

Will I receive any payment on the balance? Can I dismiss the patient? Am I required to complete treatment? Can I call the patient to discuss the matter? Those are a few questions that you may have if a patient files bankruptcy. Circumstances differ depending on the treatment plan, stage of treatment and type of bankruptcy filed. Approach each situation on a case-by-case basis. Establishing and following a bankruptcy protocol can save your practice time and possibly money as well as the potential threat of a lawsuit if the matter is not handled appropriately.

According to the American Bankruptcy Institute, more than 1.4 million consumers filed for bankruptcy in 2009, up 38 percent from 2008. With so many people filing bankruptcy, you have a much higher chance of receiving a notice from the bankruptcy court.

If you receive a notice from the bankruptcy court:

- **Review the patient's chart and note any outstanding treatment.** You have an ethical responsibility to avoid harm or injury to your patient. Complete any mid- treatment cases such as cementing crowns before withdrawing from care. In orthodontia cases, offering to remove the appliances, confirm the bite is stable and then provide a retainer at no cost may be an acceptable option. Contact and receive preapproval from the bankruptcy trustee before continuing or initiating any treatment other than emergent care.
- **Stop all collection efforts.** Bankruptcy laws prohibit contacting the consumer to demand payment. Any pending court actions against the person who filed the bankruptcy are stayed without a specific order of the bankruptcy court. Interest can no longer accrue. Violation of this rule could result in fines and/or court sanctions. There may be ways to recover a portion of the balance and for that, you would need to contact the bankruptcy court.
- **File a Claim.** Depending upon the nature of the bankruptcy, you may receive a notice or invitation to file a claim as a creditor for money owed you for services already provided. While bankruptcy in most cases means you will not likely be paid, failing to file a timely claim will preclude getting any payment, even a fraction of the money owed.
- **Protect the patient's privacy.** Avoid asking questions related to the bankruptcy while he or she is in the office to complete treatment. Caution staff to be respectful and to discuss information related to treatment purposes only.

If you decide to dismiss the patient, do so after the treatment that was begun is completed. That does not mean completing an entire treatment plan if there were teeth or areas not yet treated. Offer 30 days emergency care and two viable referrals, such as, the local dental society or patient's insurance provider. Failure to send the dismissal letter means that he or she remains an active patient of record. In the event of an emergency, you will need to see the patient for an evaluation and possible treatment. For more advice on what to do if your patient files for bankruptcy, call the TDIC Advice Line at 800.733.0634.

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Your contributions in the form of articles, photos and/or ideas are greatly appreciated. The APEX Staff is currently accepting articles of general membership interest. This can include an accomplishment, interesting hobby, innovative idea, volunteer effort, etc. Please feel free to submit an article or call for an interview. All articles are subject to editorial review. Requests for donations may be made by members but must be limited to 50 words or less.

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(6 units)

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8:30am -1:30pm
'Pearls of the Practice' – Speakers TBD
(5 units)

October TBD

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Friday, February 4 – 8:00am -11:00am

Friday, March 4 – 8:00am -11:00am

Friday, April 29 – 8:00am -11:00am

Friday, May 6 – 8:00am -11:00am

Friday, June 3 – 8:00am -11:00am